



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/150338

PRELIMINARY RECITALS

Pursuant to a petition filed June 28, 2013, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on July 22, 2013, at Racine, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a notice of overpayment of Medicaid benefits and whether Petitioner has not repaid or entered into a repayment agreement for a Medicaid overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. The Racine County Human Services Department sent Petitioner a Notice and Repayment Agreement for Medical Assistance/BadgerCare/BadgerCare+ Overpayment dated October 2,

2012 that informed Petitioner that he had been overissued health care benefits in the amount of \$3885.09 for the periods of September 1, 2002 through May 31, 2010 and November 1, 2011 through September 30, 2012. Claim #s [REDACTED], [REDACTED] and [REDACTED]. The Notice does contain appeal instructions though Petitioner did not file an appeal.

3. Dunning notices dated November 2, 2012, December 4, 2010 and January 3, 2013 were sent to Petitioner.
4. Petitioner was sent a Notice of Administrative Action and an Order to Compel Payment of Liability, both dated June 14, 2013, that informed Petitioner that he must pay the \$3885.09 within 30 days or a circuit court judgment would be entered against him.
5. All of the notices referred to at Finding #s 2, 3 and 4 were sent to Petitioner at the above Roosevelt address.
6. Petitioner has not repaid any of the overpayment involved here.
7. This appeal was filed on June 28, 2013.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* Here it is apparent that the hearing was requested well after 45 days from the date of the October 2, 2012 notice of overpayment.

Petitioner maintains this appeal should be determined to be timely for the underlying overpayment because he was out of Wisconsin for a time, because his daughter was at the address above and received the notices but threw them away and because he and his wife were legally separated in July of 2011 so he was living elsewhere. Nonetheless all of the notices, including this notice for this hearing were sent to Petitioner at the above address. He received the notice for hearing. While CCAP records support Petitioner's claim that he was legally separated they also indicate that the divorce was dismissed in June of 2012 - prior to all of the notices involved here. I am concluding that the notices of the overpayments alleged here were sent to the correct address for Petitioner and that he did not timely appeal. Thus I conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of the overpayment itself as Petitioner did not timely file his appeal.

As for the Order to Compel, Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment then the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. In this case the department has issued an order to compel payment of the liability. A person can appeal, but according to the law the only issue that can be addressed is whether s/he paid off the overpayment, or whether s/he has entered into a repayment agreement and complied with it.

Petitioner has not repaid any of this overissuance represented by claim #s [REDACTED], [REDACTED] and [REDACTED] nor has he entered into a repayment agreement. Thus I must conclude that the PACU correctly issued an Order to Compel for the \$3885.09.

CONCLUSIONS OF LAW

1. That this appeal was not timely filed as to the underlying overpayment thus the Division of Hearings and Appeals does not have authority to make a decision on the merits of the matter.

2. The PACU correctly issued an Order to Compel Payment of Liability for Medicaid overpayments represented by claim #s [REDACTED], [REDACTED] and [REDACTED] as Petitioner has not repaid the overissuance nor entered into a repayment agreement.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of September, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 6, 2013.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability